

Judge Pauley

COPY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



DEBORAH DONOGHUE,

Plaintiff,

- against -

ENDOLOGIX INC.,

Nominal Defendant,

ELLIOTT ASSOCIATES LP,  
THE LIVERPOOL LIMITED  
PARTNERSHIP and ELLIOTT  
INTERNATIONAL, LP,

Defendants.

COMPLAINT FOR RECOVERY OF  
SHORT-SWING PROFITS  
UNDER 15 U.S.C. 78p(b)

Jury Trial Demanded

DEBORAH DONOGHUE, by David Lopez, Esq., her attorney,  
complaining of the defendants, respectfully alleges the following upon information  
and belief except as to paragraph 2 which plaintiff alleges on personal knowledge:

**JURISDICTION:**

1. This action arises under the provisions of Section 16(b) of the  
Securities Exchange Act of 1934, as amended (the "Act"), 15 U.S.C. Section 78p(b),

and jurisdiction is conferred upon this court by Section 27 of the Act, 15 U.S.C. Section 78aa.

**THE PARTIES:**

2. Plaintiff is a security owner of ENDOLOGIX, INC. ("ENDOLOGIX"), a Delaware corporation with principal offices at 11 Studebaker, Irvine, California 92618.

3. At all times relevant the common stock of ENDOLOGIX was registered under Section 12(g) of the Act and was and is traded on NASDAQ through market-makers located within this district.

4. This action is brought in the right and for the benefit of ENDOLOGIX which is named as a nominal party defendant solely in order to have all necessary parties before the court.

5. At all times relevant each of the defendants was a beneficial owner of more than 10% of the common stock of ENDOLOGIX. The shareholdings of ELLIOTT ASSOCIATES LP ("ASSOCIATES") were owned through its subsidiary, THE LIVERPOOL LIMITED PARTNERSHIP ("LIVERPOOL"), making each of them the beneficial owners of the same shares. The shareholdings of ELLIOTT INTERNATIONAL, LP ("INTERNATIONAL") were owned directly by INTERNATIONAL.

6. ASSOCIATES has offices, does business and may be found at 712 Fifth Avenue, New York, New York 10019.

7. LIVERPOOL and INTERNATIONAL have offices, do business and may be found at c/o Maples & Calder, P.O. Box 309, Ugland House, South Church Street, GeorgeTown E9, Cayman Islands, British West Indies.

**STATUTORY REQUISITES:**

8. The violations of Section 16(b) of the Act to be described herein involve non-exempt securities in non-exempt transactions engaged in by non-exempt persons within the meaning of the Act.

9. Demand for prosecution was made on ENDOLOGIX on November 16, 2009, with a follow-up demand made on February 28, 2010. No recovery has been reported. Further delay in the filing of suit would be a futile gesture, the sixty day statutory waiting period having expired.

10. Some or all of the transactions to be described herein were effected in whole or in part within the Southern District of New York through market-makers located herein.

11. This action is brought within two years of the occurrence of the violations to be described herein or within two years of the time when reports required by 15 U.S.C. 78p(a) setting forth the substance of the transactions here complained of were first filed with the Securities & Exchange Commission.

**FIRST CLAIM FOR RELIEF:**

12. ASSOCIATES, acting through LIVERPOOL, its subsidiary, purchased, 10,400 shares of the common stock of ENDOLOGIX on November 12, 2009, at a price of \$4.35 per share and an additional 4,000 shares on November 13, 2009, at a price of \$4.13 per share and 5,694 shares on the same day at a price of \$4.09 per share.

13. ASSOCIATES, acting through LIVERPOOL, its subsidiary, sold *inter alia* 200,000 shares of ENDOLOGIX on September 22, 2009, at a price of \$5.80 per share.

14. The foregoing purchases and sales may be matched against one another using the "lowest-in, highest-out" method to yield profits recoverable from ASSOCIATES and/or LIVERPOOL to the benefit of ENDOLOGIX. The exact amount of such profits is not known to plaintiff but is estimated to approximate \$31,500.

15. Such profits are recoverable from ASSOCIATES and/or LIVERPOOL on behalf of ENDOLOGIX by Plaintiff as a shareholder of ENDOLOGIX, the latter having failed or refused to act in its own right and for its own benefit.

**SECOND CLAIM FOR RELIEF:**

16. INTERNATIONAL purchased 15,600 shares of ENDOLOGIX on November 12, 2009, at a price of \$4.35 and an additional 8,541 shares on November 13, 2009, at a price of \$4.09 and 6,000 shares on the same day at a price of \$4.13.

17. INTERNATIONAL sold *inter alia* 300,000 shares of ENDOLOGIX common stock on September 22, 2009, at a price of \$5.80.

18. The foregoing purchases and sale may be matched against one another using the “lowest-in, highest-out” method to yield profits recoverable from INTERNATIONAL to the benefit of ENDOLOGIX. The exact amount of such profit is unknown to Plaintiff but is estimated to approximate \$47,175.

19. Such profits are recoverable from INTERNATIONAL to the benefit of ENDOLOGIX by Plaintiff as a shareholder of ENDOLOGIX, the latter having failed or refused to act on its own behalf.

**THIRD CLAIM FOR RELIEF:**

20. This Third Claim For Relief is a precaution against possible errors of detail attributable to inaccuracies in the public record, the failure of the defendants to file reports as required by Section 16(a) of the Act or against the discovery of additional trades during the course of this action.

21. Each of the defendants, acting during periods not barred by the statute of limitations measured from the date of the filing of this complaint, purchased

and sold or sold and purchased equity securities or equity security equivalents of ENDOLOGIX within periods of less than six months of each other while a more-than-10% beneficial owner of ENDOLOGIX.

22. By reason of such purchases and sales or sales and purchases of its equity securities or equity security equivalents within periods of less than six months of one another while an insider of ENDOLOGIX, each of the defendants realized profits, the exact amounts thereof being unknown to Plaintiff, which profits inure to the benefit, and are recoverable by plaintiff on behalf, of ENDOLOGIX.

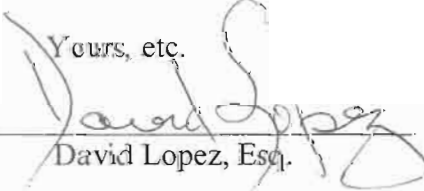
**WHEREFORE**, Plaintiff demands judgment:

a) Requiring ASSOCIATES, LIVERPOOL and INTERNATIONAL to account for and to pay over to ENDOLOGIX the short-swing profits realized and retained by it in violation of Section 16(b) of the Act, together with appropriate interest and the costs of this suit;

b) Awarding to Plaintiff her costs and disbursements including reasonable attorney's, accountants and expert witness fees; and

c) Granting to Plaintiff such other and further relief as the court may deem just and proper.

Dated: Southampton, New York  
March 29, 2010

Yours, etc.  
  
David Lopez, Esq.